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No. 86-1871

In the Supreme Court of the United States

OCTOBER TERM, 1987

NATIONAL FUEL SUPPLY CORPORATION, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL ENERGY REGULATORY COMMISSION IN OPPOSITION

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QUESTION PRESENTED

Whether this Court's decision in *Public Service Comm'n* v. *Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983), entitles petitioner to a retroactive increase in its natural gas rates.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 811 F.2d 1563. The orders of the Federal Energy Regulatory Commission (Pet. App. 23a-40a, 40a-67a, 67a-84a) are reported at 26 F.E.R.C. ¶ 61,105, 27 F.E.R.C. ¶ 61,111 and 28 F.E.R.C. ¶ 61,102, respectively.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 1987. The petition for a writ of

certiorari was filed on May 21, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner operates an interstate natural gas pipeline; it both purchases and produces gas for sale to its customers. This case concerns a dispute over the prices that may be charged by petitioner for natural gas that it produces and sells to its customers.

1. Prior to the adoption of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.*, the Federal Energy Regulatory Commission regulated the prices charged by natural gas producers, including pipelines producing natural gas, on sales of natural gas in the interstate market. The pre-NGPA regulatory scheme established essentially two categories of pricing for a pipeline's own gas production. First, "old" gas (*i.e.*, gas produced from wells drilled on or before January 1, 1973, or from leases acquired on or before October 7, 1969) was priced on a cost-of-service basis. The cost of service found by the Commission to be just and reasonable under Section 4 of the Natural Gas Act, 15 U.S.C. 717c, was included in the pipeline's rate base and incorporated into the pipeline's rates.

The price for "new" gas (*i.e.*, gas produced from post-January 1, 1973 wells or post-October 7, 1969 leases), on the other hand, was calculated on the basis of "parity pricing." Under this approach, a pipeline's production was priced at the rate that would have been applicable if the gas had been produced by an independent producer.

The Natural Gas Policy Act radically altered the regulatory structure applicable to sales of gas by producers ("wellhead" sales). Under the NGPA,

certain wellhead sales are termed "first sales," and a producer is free to charge any price up to the statutory ceiling price for specified categories of "first sales." See 15 U.S.C. 3311-3319. The NGPA pricing provisions clearly applied to gas produced by independent producers; the question soon arose whether these provisions also applied to natural gas produced by a pipeline and sold to the pipeline's customers. The Commission concluded that gas produced by pipelines did not qualify for "first sale" treatment, and required interstate pipelines to continue pricing their "old" gas under the cost of service approach. See Order No. 58, 44 Fed. Reg. 66577 (1979); Order No. 98, 45 Fed. Reg. 53091 (1980); Order No. 102, 45 Fed. Reg. 67083 (1980).

A number of pipeline-producers sought judicial review of the Commission's determination. The Fifth Circuit held that pipeline production was entitled to "first sale" treatment under the NGPA, and this Court agreed. *Mid-Louisiana Gas Co* v. *FERC*, 664 F.2d 530 (1981), aff'd *sub nom. Public Service Comm'n* v. *Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983).

2. During the time that the NGPA pricing issue was in litigation, petitioner sought and received several rate increases. The rates charged by petitioner from December 1, 1978 (the effective date of the NGPA) through October 31, 1980, were the result of a proceeding that culminated in a rate order issued by the Commission. See Pet. App. 111a-123a. One of the issues in that proceeding was the proper method for valuing gas produced by petitioner and sold to its customers. Petitioner argued that all of its own production should be priced on a cost-of-service basis, while the Commission's staff contended

that petitioner's new gas production should be priced at a level equal to gas produced by independent producers. The Commission agreed with petitioner and ordered that the production be priced on a cost-of-service basis (*id.* at 44a-46a).

Petitioner's rates from November 1, 1980 to May 31, 1982 were established in a settlement agreement among petitioner and its customers (Pet. App. 226a-263a). The agreement provided that petitioner's production would be valued on a cost-of-service basis. It contained boilerplate language stating (*id.* at 262a) that neither petitioner nor the Commission or any other party "shall be deemed to have waived any claim or right which it may otherwise have with respect to any matters not expressly provided for herein." And, although the agreement also contained express reservations of petitioner's right to alter its rates upon the occurrence of several contingencies (see *id.* at 240a n.1, 250a-251a, 256a), it did not contain a reservation of petitioner's right to raise its rates retroactively in the event the Commission's interpretation of the NGPA was overturned on judicial review. The discussion of reserved issues in the Commission's order approving the agreement did not refer to the pipeline production issue (*id.* at 263a-268a).

In late 1983, following this Court's decision in *Public Service Comm'n* v. *Mid-Louisiana Gas Co.*, *supra*, petitioner sought to reprice its own gas production retroactively for the periods covered by the prior order and settlement—December 1, 1978 to October 31, 1980 ("Period I") and November 1, 1980 to May 31, 1982 ("Period II"). It asserted a right to recover for its own production the higher NGPA prices that this Court had found to be applicable to natural gas produced and sold by a pipeline.

The Commission rejected petitioner's request for a retroactive rate increase. Pet. App. 40a-67a; see also *id.* at 67a-84a (order on rehearing). The Commission first considered petitioner's contention with respect to its period I rates. It observed that those rates had been approved by the Commission in a prior proceeding under Section 4 of the Natural Gas Act, 15 U.S.C. 717c. The Commission noted that some issues in that proceeding had been resolved by settlement, but that "the proper pricing of all of [petitioner's] pipeline production" had been "fully litigated" (Pet. App. 44a, 45a). Before both the administrative law judge and the Commission itself petitioner had argued that its production should be priced on a cost of service basis, and the Commission had agreed with that position (*id.* at 45a-47a).

The Commission stated that its order in the prior rate proceeding was "final and no longer subject to rehearing or judicial review" (Pet. App. 47a). Petitioner "made no effort in [that proceeding], or anywhere else, to preserve its rights to reprice its production for the period from December 1, 1978 * * *, through October 31, 1980, in the event that a reviewing Court would overturn the Commission's orders which were issued after the NGPA became effective governing rate treatment for pipeline production" (*id.* at 47a-48a (footnote omitted)). The Commission concluded that petitioner had presented "no legal or other basis" for reopening that already-final proceeding to permit a retroactive increase in petitioner's rates (*id.* at 48a).

The Commission also denied petitioner's request for a retroactive increase in its rates for period II. The Commission found that "[f]inal rates for this

period were established in a settlement agreement * * * approved by [the] Commission" (Pet. App. 49a). The agreement "reflect[ed] cost-of-service pricing for all of [petitioner's] pipeline production" (*ibid.*) and "[n]o language was included in the settlement agreement reserving [petitioner's] right to impose a surcharge at a later date to, in effect, raise the rates which the Commission had approved for * * * Period II if a reviewing court should reverse or modify the Commission's pipeline production regulations under the NGPA" (*id.* at 50a). The Commission concluded that the agreement barred petitioner from retroactively increasing its rates.

3. The court of appeals unanimously affirmed the Commission's determinations (Pet. App. 2a-22a). As to the period I rates, the court stated that "[i]f [petitioner] wished to contest the Commission's position on what constituted 'first sale' gas under the Act, it could have done so before the Commission and, if it did not get satisfaction there, could have brought its contentions before the courts" (*id.* at 6a). Because petitioner "did nothing either to raise this issue itself or to reserve the issue in light of the pending challenges that other parties had brought in other proceedings," its attempt to adjust the rates set in the prior proceeding "several years after [the Commission's order] became final and effective comes too late" (*ibid.*).

The court of appeals also rejected petitioner's claim with respect to the period II rates. The court concluded that it was "bound to give deference to the Commission's reading of the settlement agreement for Period II" and found that the Commission's interpretation of the agreement was "both a reasonable reading and, indeed, a correct one" (Pet.

App. 18a). The court observed that (1) the settlement agreement "expressly stated that it resolved 'all issues now pending before the Commission in the rate proceeding' "; (2) one of the issues in that proceeding was whether petitioner's gas production would be valued on a cost-of-service basis; (3) the settlement agreement specified cost-of-service valuation for petitioner's gas production; and (4) petitioner did not reserve the right to seek adjustments even though challenges to the Commission's interpretation of the NGPA were underway in the courts. *Id.* at 18a-19a (citation omitted). "Under these circumstances," the court of appeals stated, "it seems reasonable for the Commission to conclude that [petitioner's] complete failure to mention this issue constituted implicit acceptance of these rates as final and not subject to retroactive adjustment" (*id.* at 19a (footnote omitted)).

The court found that the settlement agreement's general reservation of rights did not undercut this conclusion. That reservation by its terms applied only to matters " 'not expressly provided for' [in the agreement,]" and "the matter of how to value [petitioner's] own gas production *is* 'expressly provided for' in the agreement" (Pet. App. 20a (emphasis in original; citation omitted)). In addition, the settlement agreement included three provisions in which petitioner expressly reserved its right to adjust rates if specified contingencies occurred. The court found these provisions demonstrated that petitioner "knew how to reserve issues that had a bearing on the rates applicable to its own gas production, even if those reservations might cost [petitioner] valuable benefits in the settlement negotiations. Together, they make it very difficult to read this agreement as reserving

through silence the right to claim a retroactive adjustment on a prominent issue that was being fought out in the courts during the very period in which this agreement was reached" (*id.* at 21a).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. Review by this Court is not warranted.

1. Petitioner first contends (Pet. 9-14) that the Commission and the court of appeals erred by even considering whether the order and the settlement agreement reserved to petitioner the right to increase retroactively its rates for periods I and II. In petitioner's view, this Court's decision in *Public Service Comm'n* v. *Mid-Louisiana Gas Co.*, 463 U.S. 319 (1983), itself requires the Commission to reopen *all* rate proceedings so that every pipeline producer may retroactively recover the higher rates authorized under the Natural Gas Policy Act. Petitioner's startling view of the finality of administrative proceedings is simply wrong.

This Court's decision in *Mid-Louisiana Gas Co.* does not by its terms require the Commission to modify retroactively every final rate order that reflected the Commission's erroneous interpretation of the NGPA's "first sale" standard. "Without any such explicit command," the court of appeals correctly observed, "the usual presumption is that a judicial decision should be given prospective effect except in the particular case in which the ruling is made." Pet. App. 7a; cf. *Griffith* v. *Kentucky*, No. 85-5221 (Jan. 13, 1987) (considering whether *Bat-*

son v. *Kentucky*, No. 84-6263 (Apr. 30, 1986), should be applied retroactively to *pending* cases).

This general principle is expressly embodied in the Natural Gas Act. Section 19 of that statute, 15 U.S.C. 717r, provides that judicial review of an order issued by the Commission is available only if the aggrieved party files a petition for rehearing within 30 days after the issuance of the order and then files a petition for review in a court of appeals within 60 days after the denial of the rehearing petition. If further review is not sought, the order becomes final and is no longer subject to review.[1]

Moreover, this Court has made clear that statutory authorization for increased rates cannot override a contract that limits the rates that may be charged by a gas producer. See *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332 (1956). Indeed, Congress specified that the prices authorized by the NGPA "are ceiling prices only. In no case may a seller receive a higher price than his contract permits" (S. Conf. Rep. 95-1126, 95th Cong., 2d Sess. 74 (1978)). Since a settlement agreement is no less binding than any other contract, petitioner could not recover the higher NGPA rates if those rates are precluded by the settlement agreement. See *Mid Louisiana Gas Co.* v. *FERC*, 780 F.2d 1238 (5th Cir. 1986) (examining terms of settlement

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[1] In *City of Tacoma* v. *Taxpayers*, 357 U.S. 320 (1958), this Court concluded that the identical provision of the Federal Power Act bars collateral attack in a judicial proceeding upon an order of the Commission that has become final (see 357 U.S. at 335-337). The Court has frequently relied upon its construction of parallel provisions of the Federal Power Act in interpreting the Natural Gas Act. See, *e.g.*, *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 577 n.7 (1981).

agreement to determine whether retroactive rate increase was permissible); *Consolidated Gas Supply Corp.* v. *FERC*, 745 F.2d 281 (4th Cir. 1984), cert. denied, 472 U.S. 1008 (1985) (same). Accordingly, unless petitioner reserved its right to modify the rates established in the prior order and the settlement agreement, petitioner is bound by the order and agreement and may not retroactively increase those rates.

2. The court of appeals correctly concluded that the period I rate order bars petitioner from retroactively adjusting its period I rates. The order finally determined the rates that could lawfully be charged by petitioner during the specified time period. Because petitioner failed to seek review of the Commission's order, and did not otherwise reserve its right to adjust the rates, it may not press such a claim at this late date. 15 U.S.C. 717r; cf. *City of Tacoma* v. *Taxpayers*, 375 U.S. 320, 335-337 (1958).

Petitioner asserts (Pet. 24-28) that the court of appeals' reliance on the prior rate order is misplaced because the order discusses the pricing of petitioner's "new" gas, while petitioner here seeks a retroactive rate increase for its "old" gas. But the Commission's order covered petitioner's "old" as well as "new" gas (see Pet. App. 45a-47a); old gas was not the subject of any discussion because there was no dispute over its valuation.[2] The key fact—undisputed by petitioner—is that petitioner did not challenge the Commission's interpretation of the NGPA. Peti-

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[2] It is not surprising that there was no dispute over the proper valuation of the old gas produced by petitioner; all parties, including petitioner itself, argued that cost-of-service pricing was appropriate.

tioner's attempt to assert such a challenge "several years after [the Commission's] order became final and effective comes too late" (Pet. App. 6a).[3]

3. a. The Commission (Pet. App. 48a-59a) and the court of appeals (*id.* at 9a-21a) also correctly concluded that the period II settlement bars petitioner from retroactively increasing its rates. The settlement agreement expressly states that it resolved "all issues * * * in the rate proceeding" (*id.* at 18a; see also *id.* at 230a). The valuation of petitioner's own gas production was one element of the rates provided for by the settlement agreement, and that production clearly was valued on a cost-of-service basis (*id.* at 18a-19a, 49a-50a).[4] The agreement contains no express reservation of petitioner's right to alter retroactively the valuation of its production if the

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[3] Petitioner's suggestion (Pet. 26-27) that it could not challenge the Commission's interpretation of the NGPA is simply wrong. Like the pipeline-producers who successfully challenged the Commission's interpretation before the Fifth Circuit and this Court (see page 3, *supra*), petitioner could have raised the issue on judicial review. See also *Kansas-Nebraska Natural Gas Co.*, 13 F.E.R.C. ¶ 61,172 (1980), reh'g denied, 14 F.E.R.C. ¶ 62,172 (1981), remanded, No. 81-4116 (5th Cir. July 24, 1985) (challenge to Commission's interpretation of the NGPA).

Petitioner also claims (Pet. 14-15) that the court of appeals' determination with respect to this issue conflicts with the Fifth Circuit's decision in *Mid Louisiana Gas Co.* v. *FERC*, *supra*. But the latter case concerned a settlement and, as the discussion below makes clear, it therefore rests on legal principles that are different from those that apply in the situation where a party failed to challenge a Commission order.

[4] Portions of the settlement agreement and the relevant schedules are reproduced in Appendix C of the Commission's brief in the court of appeals.

Commission's interpretation of the NGPA were overturned on judicial review. The court of appeals properly determined that, in view of the fact that the agreement resolved the question of how to value petitioner's production by adopting the cost-of-service approach, petitioner's "complete failure to mention this issue constituted implicit acceptance of these rates as final and not subject to retroactive adjustment" (Pet. App. 19a (footnote omitted)).

The agreement did contain a general disclaimer provision stating that no party to the agreement "shall be deemed to have waived any claim or right which it may otherwise have with respect to any matters not expressly provided for herein" (Pet. App. 262a). But, as the court of appeals found, "the matter of how to value * * * [petitioner's] own gas production *is* 'expressly provided for' in the agreement" (Pet. App. 20a (emphasis in original)), and the settlement therefore forecloses any claim that petitioner's production should be valued on a basis other than cost of service.

Moreover, the settlement agreement contains three provisions that expressly reserve petitioner's right to adjust its rates upon certain contingencies, none of which relates to the litigation over the pricing of pipeline production.[5] As the court below observed, these express reservations "make it very difficult to read this agreement as reserving through silence the

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[5] The rate of return on refunds mandated by the settlement was made contingent on the outcome of *United Gas Pipe Line Co.* v. *FERC*, 657 F.2d 790 (5th Cir. 1981), then pending on review in the Fifth Circuit (see Pet. App. 240a n.1); and the treatment of certain costs under the tax laws was made contingent on changes in legislation and on rulings from administrative bodies (*id.* at 250a-251a, 256a).

right to claim a retroactive adjustment on a prominent issue that was being fought out in the courts during the very period in which this agreement was reached. Such a reading would mean that silence and explicit reservation in the same document are to be given identical legal effect" (Pet. App. 21a).[6]

Finally, the settlement agreement at issue here contrasts sharply with the agreement entered into by petitioner in connection with its next rate filing. That agreement expressly provided that "issues involving the elimination of production costs from rates and [petitioner's] entitlement to NGPA prices by category are reserved for resolution in this proceeding at some time after the Supreme Court acts in *Mid-La., supra.*" FERC C.A. Br. App. D, at 11. The fact that petitioner did not include a similar express reservation in the prior settlement agreement weighs strongly against a finding that the issue was in fact reserved in the prior agreement. Cf. *Consolidated Gas Supply Corp.* v. *FERC*, 745 F.2d at 290-291 (where a prior settlement agreement did contain an express reservation, court found that absence of that reservation in subsequent agreement supported conclusion that the issue had not been reserved in the later agreement).

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[6] Petitioner asserts (Pet. 19) that the court of appeals' discussion of the express exceptions violates the *Chenery* doctrine, because the express exceptions were not cited by the Commission in support of its construction of the settlement agreement. See generally *SEC* v. *Chenery Corp.*, 332 U.S. 194, 196 (1947). But the *Chenery* doctrine does not require an agency to discuss every piece of evidence that supports its reading of a contract on penalty of forfeiting any omitted item as a ground for upholding the agency's decision. Where, as here, a court simply elaborates upon the reasoning of the administrative agency, it does not violate the *Chenery* doctrine.

b. Petitioner contends (Pet. 15-20) that the decision below conflicts with *Mid Louisiana Gas Co.* v. *FERC*, *supra*, in which the Fifth Circuit found that a settlement agreement did not bar a rate increase. Even if the two cases were not distinguishable, the narrow issue of the proper interpretation of a settlement agreement would not warrant review by this Court. But, as we show below, the differing results stem from the particular facts of each case.

First, the court in *Mid Louisiana Gas Co.* based its interpretation of that agreement in part upon the "conduct of the settling parties themselves" (780 F.2d at 1245). Prior to the Fifth Circuit decision overturning the Commission's interpretation of the NGPA, the pipeline stated its intent to seek the higher NGPA rates, and none of the pipeline's customers objected on the ground that the settlement barred that action. Even after the pipeline filed for the rate increase, none of the pipeline's customers argued that the higher rates were barred by the settlement. The *Mid Louisiana Gas Co.* court stated that "[i]f * * * Mid Louisiana had intentionally bargained away this right in settlement * * * , that [settlement] agreement surely would have been raised earlier in objection to the pipeline's obvious attempt to" take advantage of the higher rates available under the NGPA (*ibid.*). No similar course of conduct was proven in the present case; and the absence of that factor explains the different interpretation of the settlement agreement here.

Second, petitioner's subsequent settlement agreement expressly reserving the pipeline production pricing issue also distinguishes this case from *Mid Louisiana Gas Co.*, where the pipeline had not entered into a second settlement that expressly ad-

dressed the question. Indeed, the Fifth Circuit in *Mid Louisiana Gas Co.* relied upon the absence of a second settlement to distinguish *Consolidated Gas Supply Corp.* v. *FERC*, *supra*, where the court of appeals found that the settlement agreement did not preserve the pipeline's right to increase rates. The Fifth Circuit stated that the fact "[t]hat Consolidated expressly preserved the pricing issue in its first settlement, but not in the second, undoubtedly influenced the Fourth Circuit's holding. * * * Here, by contrast, there was no such midstream deletion of language to indicate that the pipeline had 'discarded' the right it so vigorously claimed from the inception of the NGPA" (780 F.2d at 1246). The sequence of events in the present case shows that when petitioner sought to reserve the right to raise its rates it included an express provision in the settlement agreement to do so. The contrasting provisions of the two settlement agreements entered into by petitioner plainly distinguish this case from *Mid Louisiana Gas Co.*

Finally, while both the *Mid Louisiana Gas Co.* agreement and the agreement at issue in the present case contain general reservation clauses stating that the parties did not waive any right except as expressly provided in the agreements, Article I of the instant settlement agreement adopted a cost-of-service price for petitioner's own gas production and did not provide any other basis for pricing the gas (see Pet. App. 232a). Article I of the *Mid Louisiana Gas Co.* settlement agreement, by contrast, provided that "Mid Louisiana's pipeline production is priced at the *Natural Gas Policy Act (NGPA) rates or priced on a cost-of-service basis*" (780 F.2d at 1243 (emphasis added)). Thus, the agreement itself al-

luded to the possibility that the gas would be valued on the basis of the NGPA prices. Because the agreement here did not leave open the possibility of NGPA pricing, it more closely resembles the agreement in *Consolidated Gas Supply Corp.* v. *FERC*, *supra*, which purported to resolve all pricing issues on a cost-of-service basis (see 745 F.2d at 288, 290-291). The Fifth Circuit in *Mid Louisiana Gas Co.* distinguished *Consolidated Gas Supply Corp.* on this ground (see 780 F.2d at 1246), and this factual difference also distinguishes *Mid Louisiana Gas Co.* from the present case.[7]

c. Petitioner also contends (Pet. 20-24) that this Court should grant certiorari to consider whether a reviewing court should defer to an administrative agency's interpretation of a settlement agreement. Some courts, including the court below, have found that such deference is appropriate. See Pet. App. 10a-18a; *Consolidated Gas Supply Corp.* v. *FERC*, 745 F.2d at 291; see also *Amoco Production Co.* v. *FERC*, 765 F.2d 686, 690 (7th Cir. 1985). Other courts have concluded that deference is not appropriate where the agency has not exercised technical expertise in interpreting the agreement. See *Mid*

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[7] The *Mid Louisiana Gas Co.* court also noted that "the economics of the case" supported the conclusion that the settlement agreement permitted a retroactive rate increase, because the value to the pipeline of NGPA pricing far exceeded the increase in revenues resulting from the higher rates permitted under the settlement agreement (780 F.2d at 1245). The court of appeals in the present case noted that "[b]y contrast, the economics in this case are entirely credible: over nineteen months, the concession [of foregoing NGPA pricing] was worth about $8,000,000, * * * as opposed to a settlement agreement that addressed [petitioner's] attempt to gain about a $28,000,000 increase in rates" (Pet. App. 21a n.7).

Louisiana Gas Co. v. *FERC*, 780 F.2d at 1243; *Cincinnati Gas & Electric Co.* v. *FERC*, 724 F.2d 550, 554 (6th Cir. 1984).

We agree with the court below that the principles announced by this Court in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), support a rule according some deference to an agency's interpretation of a settlement agreement, especially where, as here, the agency was required to approve the settlement agreement before it could become effective. However, the present case does not present an opportunity for this Court to address the theoretical differences in the approaches of the various courts of appeals because, although the court of appeals said it was appropriate to give "deference, [but] not abdication" (Pet. App. 18a) to the Commission's reading, it also expressly agreed with that reading.

The court of appeals ruled that the Commission's interpretation of the settlement agreement was "*both* a reasonable reading and, indeed, a correct one" (Pet. App. 18a (emphasis added)). It did not indicate that the standard of review was the determinative factor in its decision, and petitioner does not point to anything in the court of appeals' decision that indicates that the court would have reached a different result if it had concluded that it was inappropriate to defer to the Commission's determination. Moreover, our discussion of the reasons justifying the court of appeals' decision shows that, regardless of the standard of review, there is ample support for the construction of the settlement agreement adopted by both the Commission and the court of appeals. Because the outcome of this case would be the same—affirmance of the judgment of the court of

appeals—regardless of the degree of deference a court of appeals should pay to an agency interpretation of a settlement agreement, the present case is not an appropriate one for consideration of the standard of review issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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